IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1030 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJ.

Versus

GURUCHARANSINGH JITSINGH SARDAR

Appearance:

1. Criminal Appeal No. 1030 of 1988
MR BD DESAI APP for appellant
MR SM VOHRA for Respondent

CORAM : MR.JUSTICE A.M.KAPADIA
and
MR.JUSTICE H.H.MEHTA

Date of decision: 17/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.M.KAPADIA)

1. By means of filing this appeal under Section 378 of the Code of Criminal Procedure, 1973 ('the Code' for short hereinafter), appellant - State of Gujarat has questioned legality, validity and propriety of the judgment and order dated 5.9.1988 rendered by the learned Additional City Sessions Judge, 7th Court, Ahmedabad City, in Sessions Case No.75 of 1988 acquitting respondent/accused of the offences under Section 17 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the NDPS Act' for short) and Section 66A of the Bombay Prohibition Act ('the Act' for short).

2. As per the prosecution case, on 18.9.1986 Sabarmati Police Station received information that accused is likely to pass by the public road, near Power House, Sabarmati, Ahmedabad carrying opium. On receipt of this information, on the same day at about 9 P.M. Unarmed Head Constable (Grade II) of Sabarmati Police station went there and apprehended accused, carried out search on his person and at that time 50 grams of opium was found in his possession. The said article was recovered in the presence of Panchas after following necessary formalities. The sample of the article recovered from the accused was sent to Forensic Science Laboratory ('FSL' for short) for analysis. A complaint was initially filed against the accused for the offence under Section 66-A of the Act and on receipt of the report from FSL saying that the article sent for analysis was found to be opium, at the time of production of accused, Section 17 of the NDPS Act was added and charge-sheet was filed for the offences under the Act as well as the NDPS Act before the Magisterial Court, Ahmedabad, who committed the case to the Court of Sessions, Ahmedabad City. On committal, the learned Additional City Sessions Judge, Ahmedabad City framed charge-sheet against the accused which was read over to him to which he pleaded not guilty and claimed to be tried.

3. To prove the culpability of the accused, the prosecution has examined in all six witnesses and also produced the documents upon which heavy reliance was placed.

4. The learned trial Judge recorded further statement of the accused under Section 313 of the Code after recording of the evidence of the prosecution witnesses was over wherein also he denied the prosecution case in toto and contended that false complaint was filed

against him.

5. On appreciation, analysis and evaluation of the evidence led by the prosecution, the learned trail judge disbelieved the case of the prosecution on the premises that none of the independent witnesses has supported prosecution case and on the day when the complaint was filed, that is, on 18.9.1986 Head Constable was not authorized to search, seize and arrest any person accused of the offences under the NDPS Act and, therefore, acquitted the accused by the impugned judgment and order which has given rise to the present appeal.

6. We have heard Mr. B.D. Desai, learned APP for the appellant - State of Gujarat who has taken us through the entire collection of the evidence on record. We have also heard Mr. S.M. Vohra, learned advocate for the respondent.

7. In our considered view, there is no substance in this acquittal appeal filed by the State. According to us, except the evidence of the Police officers themselves who were the members of the raiding party, no corroborative evidence is produced on behalf of the prosecution to establish that contraband article Opium was seized from the accused and the accused was in conscious physical possession of the same.

8. P.W.3, Jerambhai Govabhai, Panch witness at Ex.15 has not supported the panchnama. He was, therefore, declared hostile witness by the prosecution and he was cross-examined by the prosecution. During his cross-examination also he stuck to the very version that he has not seen anything nor he has signed the Panchnama. He deposed that in his presence panchnama was not prepared and he has signed on blank paper. He further deposed that he has not witnessed the procedure of taking sample, seizing and sealing the same. In view of this evidence, prosecution fails to prove the recovery, search and seizure of sample of muddamal contraband article opium.

9. There is no dispute that the alleged incident took place on 18.9.1986 when Fataji Hiraji, Unarmed Head Constable carried out search and allegedly seized the Muddamal article. Now the question that arises for consideration is that on that day whether Head Constable was an authorized officer under Section 42 (1) of the NDPS Act to carry out search, seizure and arrest of a person accused of the offences under the NDPS Act. A Notification bearing No.G.H.L.14/NDS/1082-1957-7(1)/M

issued by the Government of Gujarat on 15.6.1987 empowering Head Constable and others in Police Department to search, seize and arrest the accused under the NDPS Act was produced before the trial Court. Therefore, admittedly on the day when the search, seizure and arrest of the accused was made Head Constable was not an authorized officer and he became authorized to do so in view of the notification dated 15.6.1987. On this sole ground the entire prosecution case fails and chargesheet is vitiated and therefore the learned trail Judge has very rightly recorded acquittal of the accused of the offences under Section 17 of the NDPS Act as well as Section 66A of the Act.

10. Seen in the above context, we are of the considered opinion that the learned trial Judge has very rightly considered all the aspects of the matter and reached to the correct conclusion which does not warrant interference of this Court, on the contrary, when we are in full agreement with the reasoning and ultimate conclusion arrived at by the learned trial Judge, it requires affirmation.

11. No other point is canvassed by Mr. Desai, learned APP to dislodge the reasons given by the learned trial judge and to convince us to take a view contrary to the one already taken by the learned trial Judge. Therefore, the acquittal appeal deserves to be dismissed.

12. For the foregoing reasons, the appeal fails and accordingly it is dismissed. As the accused is on bail, his bail bonds shall stand cancelled and sureties are discharged.

(A.M. Kapadia, J.)

(H.H. Mehta, J.)

(karan)